

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Sperry Owens, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Years 1977 & 1978.

State of New York
County of Albany

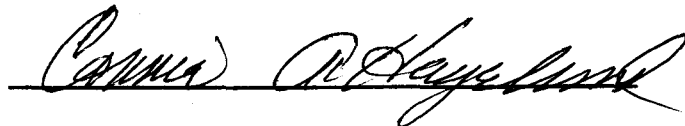
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Sperry Owens, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sperry Owens, Inc.
116 E. 27th St.
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of June, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Sperry Owens, Inc. :

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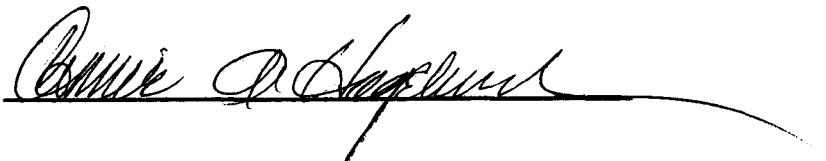
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Richard L. Haar the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard L. Haar
3000 Marcus Ave.
Lake Success, NY 11042

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
29th day of June, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 29, 1983

Sperry Owens, Inc.
116 E. 27th St.
New York, NY 10016

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard L. Haar
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SPERRY OWENS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years	:	
1977 and 1978.	:	

Petitioner, Sperry Owens, Inc., 116 East 27th Street, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1977 and 1978 (File No. 31747).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1982 at 9:30 A.M. Petitioner appeared by Richard L. Haar, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, Sperry Owens, Inc., had substantial intercorporate transactions with its wholly-owned subsidiaries, National Dynamics Corporation and U.S. Energy Sales, Inc. for the 1977 and 1978 tax years so that it may file a combined report with these subsidiaries.

FINDINGS OF FACT

1. Petitioner, Sperry Owens, Inc. ("Sperry"), filed combined corporate franchise tax reports for the tax years 1977 and 1978 for itself and National

Dynamics Corporation ("National"), U.S. Energy Sales, Inc. ("U.S. Energy"), and SCI Sales, Ltd. ("SCI").

2. On August 8, 1980, the Audit Division issued two statements of audit adjustment against the petitioner for the 1977 and 1978 tax years showing tax deficiencies of \$21,506.60 and \$7,432.30 with interest thereon of \$4,380.46 and \$882.07, for total deficiencies of \$25,887.06 and \$8,314.37 for the respective tax years. The adjustments were based upon the disallowance of the combined reports for the 1977 and 1978 tax years, and the computation of tax based on petitioner's entire net income. National and U.S. Energy were directed to file separate returns. No reference was made by the Audit Division to SCI which was dormant during the tax years at issue.

3. On August 29, 1980, two notices of deficiency were issued against petitioner for the 1977 and 1978 tax years, respectively, showing tax deficiencies of \$21,506.60 and \$7,432.30 with penalty and/or interest thereon of \$4,535.30 and \$935.58, for total balances due of \$26,041.90 and \$8,367.88 for the respective tax years.

4. Petitioner timely filed a request for permission to file a combined return for the 1977 tax year. However, petitioner conceded that its request for permission to file a combined return for the 1978 tax year was filed one day late.

5. Petitioner during the tax years at issue owned 100 percent of the capital stock of National, U.S. Energy, and SCI. Therefore, these companies were petitioner's wholly-owned subsidiaries.

6. Richard L. Haar, the petitioner's CPA, testified that the companies had one common office; that no separate staffs were maintained; that the sales department, bookkeeping department, order department, secretaries, mailing

department, and all executives functioned for all companies; and that expenses for telephone, utilities, rent, accounting, office equipment, supplies, temporary help, repairs and maintenance were shared.

7. Petitioner and National were distributors of automotive products: Sperry distributed an engine additive, "T-M-T, The Motor Treatment"; National distributed a battery additive, "VX-6".

8. According to testimony of Richard L. Haar, Sperry was separately organized in 1976 because of the large debts of National, the older corporation. He testified that since the products of Sperry and National were manufactured by the same corporation, L.D. Products, Sperry promised to pay the debts of National in order to get its products manufactured and that expenses properly allocated to National were made out to Sperry since National did not have the financial resources to pay its own debts.

9. Richard L. Haar also testified that the products of Sperry and National were sold directly to the consumer through mail advertising, though some sales were also made to major vendors such as automobile dealers. The sales of Sperry and National were frequently tied together. Joshua S. Sparrow, former president of petitioner, in his letter dated March 2, 1978, petitioner's exhibit 3, stated that "(o)ften times, National's product is thrown into the deal at a minimal cost, just to enhance the entire sales picture of both". In addition, Sperry utilized National's mailing list and customer accounts records to generate new business.

10. Sperry's engine additive and National's battery additive were sold under private labels by SCI. However, during the tax years at issue, SCI was inactive.

11. U.S. Energy was an advertising arm of both Sperry and National. Richard L. Haar also testified that all of the products sold by U.S. Energy were purchased from Sperry, and that 1 percent of Sperry's total sales were sold to U.S. Energy. However, he later testified that only 50 percent of the sales of U.S. Energy were of products purchased from Sperry.

12. Richard L. Haar testified that he could not determine what percentage of Sperry's sales were made to National, though he denied that it was zero.

13. The Audit Division conceded that Sperry and National were a unitary business in a letter dated March 27, 1978, the Department's exhibit L.

CONCLUSIONS OF LAW

A. That Tax Law section 211.4 authorizes the Tax Commission, in its discretion, to require or permit a taxpayer and its wholly-owned taxpayer subsidiaries to make a report on a combined basis.

B. That pursuant to Tax Law section 208.2, since petitioner and its subsidiaries, National and U.S. Energy are subject to tax under Tax Law Article 9-A, they are "taxpayers" within the meaning of Tax Law section 211.4.

C. That 20 NYCRR 6-2.3 which was effective for the tax years at issue provides in part as follows:

"In deciding whether to permit or require the combined reports the following two broad factors must be met:

(1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and

(2) there are substantial intercorporate transactions among the corporations."

Since the petitioner and its wholly-owned subsidiaries, National and U.S. Energy are "in substance parts of a unitary business conducted by the entire group of corporations", the issue before is whether there are "substantial intercorporate transactions among the corporations".

D. That 20 NYCRR 6-2.3(c) provides as follows:

"In determining whether the substantial intercorporate transaction requirement is met, the Tax Commission will consider only transactions directly connected with the business conducted by the taxpayer, such as described in paragraph (1), (2), or (3) of subdivision (b) of this section (i.e. (1) manufacturing or acquiring goods or property for other corporations in the group; or (2) selling goods acquired from other corporations in the group; or (3) financing sales of other corporations of the group). Service functions, such as accounting, legal and personnel will not be considered. The substantial intercorporate transaction requirement may be met where as little as 50 percent of a corporation's receipts are from any qualified activities..."

E. That pursuant to Tax Law section 1089(e), the burden of proving substantial intercorporate transactions is upon the petitioner.

F. That although Sperry, National, and U.S. Energy share personnel, have one common office, function with the same departments for sales, orders, bookkeeping, and mail, and share expenses for rent, telephone, utilities, supplies, accounting, temporary help, repairs and maintenance, the petitioner has failed to show that there were substantial intercorporate transactions among the members of the combined group as required by the applicable regulations. For example, only 1 percent of petitioner's receipts were derived from sales to U.S. Energy, while petitioner failed to show what percentage of petitioner's sales were made to National, though its accountant denied that there were no such sales.

G. That the petition of Sperry Owens, Inc. is denied and the notices of deficiency are sustained.

DATED: Albany, New York

JUN 29 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER